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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re E.V., a Person Coming Under the Juvenile  
Court Law.

TULARE COUNTY HEALTH AND HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

F.V.,

Defendant and Appellant.

F078010

(Super. Ct. No. JJV069671A)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Tulare County. Robin L. Wolfe,  
Judge.

Susan M. O'Brien, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and  
Respondent.

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\* Before Levy, Acting P.J., Franson, J. and Peña, J.

F.V. (mother) appealed from the juvenile court's August 8, 2018, order terminating her parental rights to her now three-year-old son Ethan V. (Welf. & Inst. Code, § 366.26.)<sup>1</sup> After reviewing the juvenile court record, mother's court-appointed counsel informed this court she could find no arguable issues to raise on mother's behalf. This court granted mother leave to personally file a letter setting forth a good cause showing that an arguable issue of reversible error exists. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844 (*Phoenix H.*.)

Mother submitted a letter in which she contends trial counsel was ineffective in representing her on a petition she filed under section 388 in the juvenile court. She also contends the department failed to remove Ethan from a foster home where he was being neglected and abused. She does not, however, allege the juvenile court erred in terminating her parental rights.

We conclude mother failed to address the termination proceedings or set forth a good cause showing that any arguable issue of reversible error arose from the termination hearing. (*Phoenix H.*, *supra*, 47 Cal.4th at p. 844.) Consequently, we dismiss the appeal.

### **PROCEDURAL AND FACTUAL SUMMARY**

Dependency proceedings were initiated in March 2016 after the Tulare County Health and Human Services Agency (agency) filed a dependency petition on behalf of then newborn Ethan alleging mother exposed him to methamphetamine in utero. She was allowed to retain custody of him with family maintenance services. However, in December 2016, the agency took Ethan into protective custody and filed a supplemental petition (§ 387) because mother was noncompliant with her family maintenance services. The agency placed Ethan with his maternal aunt, Julie.

In January 2017, the juvenile court sustained the supplemental petition and ordered mother and B.C., Ethan's biological father, to participate in reunification

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

services. At an uncontested six-month review hearing in July 2017, the court continued reunification services for mother to the 12-month review hearing but terminated services for B.C. In November 2017, the agency removed Ethan from Julie's care and placed him in a foster home after receiving information that Julie allowed mother to visit Ethan while intoxicated.

In January 2018, the juvenile court terminated mother's reunification services because she failed to maintain her sobriety and attempted to harm herself during a visit with Ethan. The court set a section 366.26 hearing for May 2018. Mother did not challenge the court's setting order by extraordinary writ petition.

The agency recommended the juvenile court terminate parental rights at the section 366.26 hearing and select adoption with Ethan's care providers as his permanent plan. Ethan was strongly bonded to his care providers and other children in the home.

In May 2018, maternal aunt Graciela M. and her husband (Mr. and Mrs. M.) filed a motion, invoking the relative placement preference (§ 361.3) and requesting immediate placement of Ethan with them. The agency opposed the motion.

In June 2018, mother's attorney filed a modification petition under section 388 (section 388 petition), asking the juvenile court to provide her additional time to reunify. As changed circumstances mother alleged she continued to engage in substance abuse treatment, entered a parenting program in April 2018, and was approved for government-funded housing. She believed she was best suited to love and care for Ethan and raised concerns about the care he was receiving in his foster home. In a letter attached to the petition, she stated Ethan acquired head lice, a black eye, and fungus on his "private area" while in foster care. She was also concerned his multiple placements would cause him emotional harm. She noticed he was unhappy and withdrawn during their visits.

The juvenile court set a hearing to determine whether it should grant or deny an evidentiary hearing on her section 388 petition. The agency opposed mother's petition and addressed her concerns about Ethan's foster care placement. Ethan was treated for

lice and sustained a bruise under his eye during play in December 2016, but was no longer in that foster placement. He did not have a fungus but rather a diaper rash, which had resolved. As to visitation, mother elected to visit Ethan every other week instead of weekly because of her school and work schedule. As of June 20, 2018, she had only visited him seven times since January.

In July 2018, the juvenile court denied mother's section 388 petition. The court found mother's circumstances had changed in that she consistently attempted to better herself, but found it was not in Ethan's best interest to grant her further reunification services. The court ordered visitation for Mr. and Mrs. M. and confirmed a contested section 366.26 hearing for August 2018.

On August 8, 2018, the juvenile court found Ethan was likely to be adopted and terminated parental rights.<sup>2</sup> In making its decision, the court considered the beneficial parent-child relationship exception to adoption and concluded it did not apply because mother did not regularly visit Ethan and failed to show that severing parental rights would be detrimental to him. The court also ordered the agency to consider Mr. and Mrs. M. for placement and granted it discretion to increase the duration and frequency of their visits.

## **DISCUSSION**

At a termination hearing, the juvenile court's focus is on whether it is likely the child will be adopted and if so, to order termination of parental rights. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) If, as in this case, the child is likely to be adopted, the juvenile court must terminate parental rights unless the parent proves there is a compelling reason for finding that termination would be detrimental to the child under

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<sup>2</sup> B.C. also appealed from the termination order and his court-appointed counsel filed a "no issues" letter under *Phoenix H.* We dismissed his appeal after he failed to file a letter brief.

any of the circumstances listed in section 366.26, subdivision (c)(1)(B) (exceptions to adoption).

Mother does not challenge the sufficiency of the evidence supporting the juvenile court's finding Ethan is likely to be adopted. Nor does she claim the court's termination order was error because the beneficial parent-child relationship exception to adoption applied. Rather, she raises an issue she addressed in her section 388 petition; i.e., Ethan was being abused and neglected in foster care. She also contends her trial counsel was ineffective because she did not use evidence mother gave her to support the petition.<sup>3</sup> We conclude mother fails to show good cause that either issue merits additional briefing.

The thrust of mother's section 388 petition was that her continued efforts to comply with her services plan and her bond with Ethan justified renewed efforts to reunify with him. Her assertions that he was receiving poor treatment in foster care supported her argument it would serve his best interest to pursue reunification with her. However, the agency addressed mother's concerns about Ethan's foster care placement, stating he was no longer in that home. Further, the juvenile court ruled that it would not be in Ethan's best interest to pursue reunification. To make a good cause showing, mother would have to show the juvenile court's finding was an abuse of discretion, which she fails to do.

Concerning mother's claim of ineffective assistance, she contends her trial attorney did not use a letter and "other proof" she provided to support her section 388 petition. However, in order to make an arguable case of ineffective assistance of counsel, mother has to show more; she has to show her attorney "failed to act in a manner to be

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<sup>3</sup> Although mother cites the termination order in her notice of appeal, we could review any arguable issues related to the section 388 petition because the juvenile court issued its denial order during the 60-day period prior to her filing the notice of appeal. (*In re Madison W.* (2006) 141 Cal.App.4th 1447, 1451; we "liberally construe a parent's notice of appeal from an order terminating parental rights to encompass the denial of the parent's section 388 petition ....")

expected of reasonably competent attorneys practicing in the field of juvenile dependency law” and the “claimed error was prejudicial.” (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668.) Here, mother fails to specify what evidence her letter or “other proof” contained and how it would have caused the juvenile court to grant her section 388 petition. Her bare assertion, without more, is not good cause to show an arguable issue of ineffective assistance exists on the record. Nor does she point to any other evidence in the record that would support such a claim.

We find nothing in mother’s letter that raises a good cause showing an arguable issue exists on the record. Further, though we are not required to do so, we have reviewed the pertinent parts of the record and we have found no arguable issues for briefing. (*Phoenix H., supra*, 47 Cal.4th at pp. 841-842.) Accordingly, we dismiss the appeal.

#### **DISPOSITION**

This appeal is dismissed.